

April 19, 2019

Via Electronic Filing

Joycelyn Boyd, Chief Clerk
SC Public Service Commission
Post Office Drawer 11649
Columbia SC 29211

RE: Ecoplexus Inc. vs. South Carolina Electric & Gas Company
Docket No. 2019-130-E
NMRS File No.:

Dear Ms. Boyd,

On behalf of Ecoplexus Inc. ("Ecoplexus"), I respectfully submit this letter to alert the Commission of recent actions taken by South Carolina Electric & Gas Company ("SCE&G") that have a direct impact on issues pending before the Commission in the above-captioned proceeding. As explained in more detail below, these recent actions by SCE&G demonstrate the need for the Commission to take expedited action and grant the relief sought by Ecoplexus in the Motion to Maintain Status Quo ("Motion"), submitted by Ecoplexus in the above-captioned proceeding on April 15, 2019.

On April 15, 2019, Ecoplexus filed a complaint ("Complaint") against SCE&G showing specific violations of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), several provisions of 18 C.F.R. Section 292, as well as specific violations of Commission orders related to the development of Barnwell PV1, a 74.9 MW-ac solar qualifying facility ("QF"), queue position 332 ("Barnwell"), and Jackson PV1, a 71 MW-ac solar QF, queue position 331 ("Jackson") (each a "Project" and collectively, the "Projects"), both owned by Ecoplexus.¹

Ecoplexus filed the Motion concurrent with the Complaint. In the Motion, Ecoplexus noted that the interconnection costs assigned to the Projects by SCE&G were made in a discriminatory manner, in violation of 18 C.F.R. Section 292.306(a). In light of this, as well as other violations outlined in the Complaint, Ecoplexus averred that the Projects should not be required to make any milestone payments required under the Projects'

¹ See Complaint at 1.

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interconnection agreements (each an “IA” and collectively the “IAs”) until the underlying proceeding initiated by the Complaint is resolved.² The first of these milestone payments were due on April 16, 2019, and total over \$10 million.³ Ecoplexus also requested that the Commission act in an expedited manner to grant the relief sought by the Motion.

On April 17, 2019, SCE&G sent two letters to Ecoplexus, which Ecoplexus received on April 18, 2019, stating that it was terminating the IAs for each Project because Ecoplexus had not paid the first milestone payment for either Project.⁴ In the April 17, 2019 Letters, SCE&G claimed that “the IA is null and void and deemed terminated by its own terms in accordance with Appendix 2 [of the IA] because Interconnection Customer failed to make a timely payment of Milestone Payment 1.”⁵

This development is troubling for several reasons. First, Appendix 2 of the Projects’ IAs do not deem an IA to be terminated simply because an Interconnection Customer misses a milestone payment. The only relevant language in Appendix 2 of the Projects’ IAs related to missed milestone payments states that “[f]ailure to make the [milestone] payment may result in the termination of the Generator Interconnection Agreement and the withdrawal of the Generator Interconnection Application.” This language does not “deem” an IA terminated due to a missed milestone payment, as SCE&G stated in the April 17, 2019 Letters.

Further, even assuming *arguendo* that Ecoplexus’ failure to make the milestone payment was a breach of the IAs, SCE&G’s resulting actions are a clear violation of Section 7.6.1 of the IAs. This section addresses Defaults⁶ under the IAs, and states in relevant part that “[u]pon a Default, the non-defaulting Party *shall give written notice* of such Default to the Defaulting Party. . . . [T]he defaulting Party *shall have five (5) Business Days from receipt of the Default notice within which to cure such Default.*”⁷ SCE&G provided no such written notice to Ecoplexus, nor did it provide Ecoplexus with an opportunity to cure the alleged default (*i.e.* by paying the first milestone payment). Accordingly, SCE&G’s termination of the IAs without providing such notice and opportunity to cure is invalid because it is a clear violation of Section 7.6.1 of the IAs.

² See Motion at 2.

³ See *id.*

⁴ Letters from SCE&G to Ecoplexus, April 17, 2019 (the “April 17, 2019 Letters”) (The substance of each letter for each Project are identical. Accordingly, to avoid providing the Commission with repetitive documents, Ecoplexus is only attaching the April 17, 2019 Letter for Jackson hereto).

⁵ See *e.g.* April 17, 2019 Letter for Jackson (attached).

⁶ “Default” is defined under the IAs as “The failure of a breaching Party to cure its breach under the Interconnection Agreement.”

⁷ The Projects’ IAs, Section 7.6.1 (emphasis added).

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Moreover, it is Ecoplexus' position that the non-payment of the first milestone for the Projects did not in fact constitute a default under the facts and circumstances present here. This is because the issue of whether Ecoplexus has to pay any applicable milestone payments for either Project while the underlying proceeding initiated by the Complaint remains ongoing is an issue squarely before the Commission in the pending Motion. Rather than awaiting the Commission's decision on the Motion, or even filing a response to the Motion, SCE&G instead elected to terminate the IAs in clear violation of Section 7.6.1 of the IAs.

The foregoing actions of SCE&G are yet another example of the discriminatory behavior that Ecoplexus has been subjected to in the course of developing the Projects, and demonstrates why expedited Commission action in granting the relief sought in the Motion is necessary. Accordingly, Ecoplexus respectfully reiterates its request that the Commission grant relief sought in the Motion in an expedited manner.

Very truly yours,

s/

Weston Adams, III

Cc: Jeremy Hodges, Esq.
Jennifer Pittman, Esq.

Enclosures: April 17, 2019 Letter for Jackson (Attachment A).

Attachment A



Jackson PV1, LLC
Attn: John Gorman
101 2nd Street
Suite 1250
San Francisco, CA 94105

April 17, 2019

Re: **Termination of Interconnection Agreement**

Dear John:

Jackson PV1, LLC ("Interconnection Customer") and South Carolina Electric & Gas Company ("Utility") entered into an Interconnection Agreement (the "IA") on February 11, 2019. A copy of the IA is provided as Attachment A to this letter.

In Appendix 4 to the IA, Interconnection Customer agreed to complete certain Milestones (as defined in the IA). Each Milestone details critical responsibilities of Interconnection Customer. The first of those Milestones included a payment of \$5,371,200.00 ("Milestone Payment 1"), which was due and payable under the terms of the IA on or before April 16, 2019.

This deadline for Milestone Payment 1 has now passed, and Interconnection Customer failed to make Milestone Payment 1 as required by the IA. Therefore, the IA is null and void and deemed terminated by its own terms in accordance with Appendix 2 because Interconnection Customer failed to make timely payment of Milestone Payment 1. As the IA has terminated, the proposed amendment to the underlying IA is also terminated.

Sincerely,

Matt Hammond
Manager, Transmission Support

Attachment A

See attached.